IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/02/2003

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THE HONOURABLE MR. JUSTICE A. PACKIARAJ

Criminal Revision Case No.1294 OF 2000

1.Sakthi Sugar Limited
(Soya Division)
rep. by its M.D.
Race Course Road,
Coimbatore

2.Xavier Poulraj ..... Petitioner

-Vs-

Seed Inspector
Pattukottai
10/4, Govindaraj Colony
Kulandaivel St.,
Mannargudi ..... Respondent

Revision filed against the order made in CMP No.1461 of 1999 in STC No.337 of 1999 on the file of the Judicial Magistrate, Orathanadu dated 16.10.2000.

!For petitioner : Mr.K.Asokan, Senior Counsel for
M/s.V.Ayyathurai

^For respondent : Mr.V.Arul, Government Advocate

:O R D E R

This revision has been filed against the orders passed by the Judicial Magistrate cum District Munsif Orathanadu in C.M.P. No.1461 of 199 9 in STC No.337 of 1999, dismissing the petition filed on behalf of the petitioners to drop the prosecution for offence under sections 6A and 7 of the Seeds Act, punishable under section 19-A of the Seeds Act (herein after referred to as 'the Act').

2.The brief facts of the prosecution is as follows:-

Sample seeds of soya bean were taken by the Seed Inspector from the 1st petitioner firm, on 24.12.1998, on the ground that they were found to be substandard. Thereafter, he send them for analysis to the Seed Testing

Officer, Katthuthotam, who received them on 05.01.1998 and submitted his report back to the Seed Inspector on 07.01.1998 and the report disclosed that the seeds were found to be substandard. The seed Inspector thereafter filed a complaint before the Judicial Magistrate, Orathanadu on 08.06.1999 on the basis of this analyst report.

3.The petitioners received summons and appeared before the court on 28.6.1999 and filed an application for discharge, stating that the complaint itself reveals that the date of expiry was on 19.05.1999 whereas the complaint has been filed only on 08.06.1999 and the valuable right that has been conferred on them, by virtue of section 16(2) of the Act, which authorises them to file an application before the court before which the complaint has been launched, for getting the samples retested and if retest has been done, the second report or the report obtained after the retest takes precedence over the first report and that would reveal that the seeds are not

substandard. However, since the complaint has been filed after the expiry date, they have been deprived of their valuable right and hence the prosecution has to be dropped.

4.The learned Magistrate did not find favour with the argument advanced on behalf of the petitioners and stated that those matters have to be gone into by the trial court. Aggrieved by the same, the present revision has been filed.

5.The learned counsel for the petitioner took me through the provisions of Section 16(1), 16(2) and 16(3) of the Act. They are as under:-

Seed Act:- Section 16,

(1), The Seed Analyst shall, as soon as may be after the receipt of the sample under sub section (2) of Section 15, analyse the sample at the State Seed Laboratory and deliver, in such form as may be prescribed, one copy of the report of the result of the analysis to the Seed Inspector and another copy thereof to the person from whom the sample has been taken.

(2) After the institution of a prosecution under this Act, the accused vendor or the complainant, may, on payment of the prescribed fee, make an application to the court for sending any of the samples mentioned in Clause (a) or clause (c) of Sub section (2) of section 15 to the Central Seed Laboratory for its report and on receipt of the application, the Court shall first ascertain that the mark and the seal or fastening as provided in clause (b) of sub-section (1) of Section 1 5 are intact and may then despatch the sample under its own seal to the Central Seed Laboratory which shall thereupon send its report to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis.

(3) The report sent by the Central Seed Laboratory under subsection(2) shall supersede the report given by the Seed Analyst under subsection (1).

6.Section 16(1) of the Act says that the Seed Analyst, as soon as

after the receipt of the samples, analysis them in the State Seed Laboratory. In this case, the seeds which have been seized on 24.12.1998 have been sent on 05.01.1998, which cannot be, in the eye of law, said to be much delay.

7.Section 16(2) of the Act says that after the institution of a prosecution, the accused or the complainant, may, make an application to the court and request the court to send the remaining samples for analysis, in case they are not satisfied with the first report. But in the present case, when the date of expiry is on 19.05.1998, there is no point in sending the samples for retest or reanalysis after the date of expiry and according to Section 16(2) of the Act, retest could be made only after the prosecution has been launched and the accused comes into the picture and not before that. In other words whether or not prosecution is launched, even if the accused are aware of it, they cannot file an application before any authority, much less before the court for getting the samples reanalysed.

8.The learned counsel for the petitioners brought to my notice the decision of the Supreme Court made in State of Haryana Vs. Unique Farmaid (P) Ltd. And others and connected appeals, reported in 1999 Supreme Court Cases (Cri) 1404, wherein a similar point arose under the Insecticide Act. Though under the Insecticide Act, such provisions contemplating or giving a right to the accused to send the samples after the initiation of prosecution is not mentioned, there is a provision which states that the accused or the person from whom the sample is taken, has a right to send the same for reanalysis within 28 days from the date of receipt of analysis report from the Seed Analyst. But if the copy of the analyst report is given to the person from whom the samples have been taken, after the expiry date, he loses his valuable right of sending the same for reanalysis. The same analogy applies to the case on hand.

9.I see considerable force in the argument of the learned counsel, especially when the complainant himself has stated in the complaint that the dates expires on 19.5.1998 and it is only on 08.06.1999, the complaint has been filed before the court. Therefore, if at all the accused can get the samples retested, it is only after 08.06.1999 he could do so by filing an application before the court concerned but by that time the period had expired.

10.In this context it is worth to note the observation of the Supreme Court made in the decision cited supra, which runs thus:-
"If the expiry date is not relevant, there was no reason why in the form prescribed for submission of the report by the Insecticide Analysis the dates of manufacture of the article and the expiry date are mentioned".
11.Though the Act does not prescribe any period of limitation, the prosecution has not come forward with any explanation whatsoever as to why, when the analyst report was received on 07.01.1998, prosecution was launched only on 08.09.1998, after the expiry date. Therefore, I am of the view that the accused having lost a valuable right of sending the samples for reanalysis, cannot be proceeded for the above said offences. Accordingly, this revision is allowed and the proceedings are dropped as against the

petitioners. Crl.M.P. Nos.9266, 9267 of 2 000 are closed.

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Index:Yes
Website:Yes

To

1.The Judicial Magistrate cum District Munsif, Orathanadu

2.-do- Through the Chief Judicial Magistrate, Thanjavur

3.The Public Prosecutor, Madras

4.The Seed Inspector, Pattukottai